THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.13245 OF 2007

Dated: 03-07-2007

Between :

Basha Traders, rep. By its Proprietor Sk. Saleem … Petitioner

And

1. The Government of India, rep.by its Secretary, Ministry of Consumer Affairs Department, Food and Public Distribution, Krushi Bhavan, New Delhi., And 5 others. … Respondents

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ORDER:

The 3rd respondent – Food Corporation of India invited sealed tenders for disposal of foodgrains Maize, lying at the depot of AP Markfed Limited and A.P. Civil Supplies Corporation Limited as is where is basis. As per the terms and conditions of the sale, the tender should be accompanied by the earnest money calculated at the rate of 2% of the value of the stocks intended to be purchased at the rates being quoted by the tenderer. On acceptance of the offer, the tenderer should deposit 5% of the value of the stocks intended to be purchased as security money within seven days from the date of communication of acceptance. The balance cost of 95% should be made within 15 days on the date of communication of the acceptance in installments if need be. The successful tenderer is also required to remove the stocks within 30 days from the date of issue of approved prices by the competent authority which could be extended by another 30 days on payment of storage charges.

It is not in dispute that pursuant to the said tender notice dated 26-7-2006 the petitioner was declared as the successful bidder and by letter dated 8-9-2006 the General Manager (A.P.), FCI informed that the rates quoted by the petitioner have been accepted. Pursuant thereto, the petitioner has remitted Rs.2,00,000/- towards the cost of the 33.849 Metric Tons and also lifted the stock. However, so far as the balance is concerned,

though the petitioner had taken the demand draft within the time stipulated towards its cost, it appears that he fell sick and could not submit the demand draft within the stipulated time. Ultimately, the demand draft dated 3-10-2006 could be submitted to the 4th respondent on 26-10-2006 along with a letter explaining the reasons for his inability to submit the same before 10-10-2006 and also requesting to issue necessary orders permitting to lift the balance stock from the godowns. The 4th respondent - Assistant General Manager (Sales), FCI forwarded the same to the 2nd respondent by letter dated 17-11-2006. However, the 2nd respondent rejected the request of the petitioner and the same was communicated to the petitioner by the 4th respondent by letter dated 2-2-2007 stating that as per the terms and conditions, the EMD/SD paid by him for a sum of Rs.3,14,500/- has been forfeited and the remaining stocks would be disposed of by the FCI at the risk of the petitioner and the losses, if any, would be recovered from him including storage charges, penal interest and other costs. Having received the same, the petitioner made representations dated 23-3-2007 and 28-3-2007 to various authorities of the FCI, but there was no response. Hence, this writ petition seeking a declaration that the action of the respondents as communicated by the 4th respondent dated 2-2-2007 is arbitrary and illegal. The petitioner also sought a direction to the respondents to release the balance stock of Maize to him.

I have heard the learned Counsel for both the parties and perused the material on record.

From the facts narrated above, it is not in dispute that as per the terms and conditions of the contract, the petitioner is required to lift the stocks from the FCI godowns within 30 days from the date of issue of approved prices by the competent authority and the said period can be extended by another 30 days and after the expiry of the said 60 days

no further extension will be granted under any circumstances. The Clause also provides that in such an eventuality the EMD/SD deposited by the tenderer would be forfeited and the stocks would be sold at the risk and cost of the tenderer. The time for payment of cost of the stocks also has been stipulated in clear terms.

The relevant clause from the terms and conditions of agreement dated 26-7-2007 may be extracted hereunder :

> *"**(H) PAYMENT/DELIVERY SCHEDULE :***
> *Price of the foodgrains will be payable on the net weight basis. All taxes and other charges of any nature what so ever leviable by any authority shall be payable by the buyer in addition to the price offered.*
> *(i) The balance 95% payment of the stocks will be made within fifteen (15) days of the date of communication of acceptance by FCI, in installments if need be.*
> *(ii) If the tenderer fails to deposit the balance 95% cost of the stocks within the stipulated period, then he would be given additional time period of fifteen (15) days to deposit the balance cost with payment of penal interest of 2% over and above the Bank rate at which the FCI is borrowing.*
> *(iii) The buyer will complete the lifting within thirty (30) days of issue of approved prices by the Competent Authority.*
> *(iv) After thirty (30) days the tenderer will be allowed a maximum period of another thirty (30) days for lifting the stocks from FCI godowns on payment of storage charges as contained in Clause 'O'.*
> *(v) After sixty (60) days, no further extension will be granted under any circumstances and EMD/SD etc., deposited by the tenderer(s) will be forfeited and the stocks will be sold at the risk and cost of the firm without any further notice.*
> *… …. …. ….. ….. ….."*

Admittedly the petitioner could not comply with both the above conditions. Though he could lift a part of the stock on payment of its cost within time, the cost of the balance stock could not be paid before 8-10-2006 i.e., the maximum period of 30 days allowed under Clause (H) from the date of communication of acceptance by Food Corporation of India. Admittedly, he also failed to lift the stocks within 60 days prescribed under the contract. In the circumstances, the

consequences stipulated under the contract would automatically follow.

It is relevant to note that the contract in question is a non-statutory contract and all the rights and liabilities of the parties are regulated by the terms and conditions of the agreement itself. It is a voluntary act on the part of the parties and they are bound by the same. The law is well-settled that in a case of concluded contract voluntarily entered into between the parties where the terms and conditions are not regulated by any Statute as such, the obligations which arise out of such contract cannot be dealt with under Article 226 of the Constitution of India.

As noted above, it is not in dispute that the impugned action of the respondents is the result of breach of contract committed by the petitioner on account of his failure to pay the money and lift the stock within the time prescribed. Even assuming that the petitioner's default was not deliberate, in the absence of any material to show that the impugned action suffers from arbitrariness or unreasonableness the matter does not deserve interference by this Court under Article 226 of the Constitution of India.

Hence, the Writ Petition is hereby dismissed. No costs.

However, this shall not preclude the petitioner to work out the appropriate common law remedy for redressal of his grievance, if any.

G. ROHINI, J.

DT. 03–07-2007
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